U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10320524

Date: SEPT. 8, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, an art critic and scholar, seeks classification as an alien of extraordinary ability. See Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had satisfied only two of the initial evidentiary criteria, of which he must meet at least three.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. See Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that

is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. See Kazarian v. USCIS, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); see also Visinscaia v. Beers, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); Rijal v. USCIS, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner indicates employment as a lecturer at [redacted] University in [redacted] China. He earned a Ph.D. in art history in 2015 from [redacted] University. Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

On appeal, the Petitioner incorrectly states that the Director concluded that he did not meet any of the initial evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). To the contrary, in denying the petition, the Director determined that the Petitioner fulfilled two of the initial evidentiary criteria, published material in certain media at 8 C.F.R. § 204.5(h)(3)(iii) and scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). Although we agree with the Director that the Petitioner authored scholarly articles in professional publications, we do not concur with the Director's finding relating to the published material criterion, discussed later.

On appeal, the Petitioner asserts that he meets two additional criteria. After reviewing all the evidence in the record, we conclude that the Petitioner does not establish that he satisfies the requirements of at least three criteria.

> Published material about the individual in professional or major trade publications or other major media, relating to the individual's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii)

As discussed earlier, the Director found that the Petitioner satisfied this criterion. The Petitioner contends that he meets this criterion based on articles published in the print versions of Cultural Monthly, Times of Malta, and Beijing Youth Weekly. In order to satisfy this criterion, the Petitioner must demonstrate published material about him in professional or major trade publications or other major media, as well as the title, date, and author of the material.[1] For the reasons outlined below, the

[1] See USCIS Policy Memorandum PM 602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140 Petitions;

documentation submitted does not sufficiently demonstrate that the Petitioner meets this criterion, and the Director's determination on this issue will be withdrawn.

The record contains an article about the Petitioner related to his work as an art historian appearing in the [redacted] 2019 edition of the print magazine Cultural Monthly. The article includes an interview with the Petitioner and identifies the author of the material. The Petitioner also submitted a screenshot from www.baike.baidu.com indicating there are print and digital versions of Cultural Monthly, and its "distribution scope" includes libraries, universities, museums, embassies, and "famous collectors, critics, artists and art investors at home and abroad all over the country." However, the Petitioner does not submit evidence, such as circulation statistics for the print version of the publication and its intended audience, that might establish that Cultural Monthly, described on www.baike.baidu.com as covering "literature and art, non-material cultural heritage, cultural tourism, cultural creativity, folk customs, painting, and calligraphy appreciation, national brands, old, animation games, constructive and humanistic combination of the characteristics," is a professional publication, major trade publication, or other major medium in China.[2]

The Petitioner also submitted an article appearing in the print publication Times of Malta. This article is not about the Petitioner; it was written about the 2018 exhibition [redacted] by watercolor artist [redacted] at [redacted] cultural center in [redacted] Malta. The article states that the exhibition was curated by the Petitioner and is on display, but the Petitioner is not otherwise mentioned in the article. The article also discusses art critic [redacted]'s impressions of the exhibition. Articles that are not about a petitioner do not fulfill this regulatory criterion. See, e.g., Negro-Plumpe v. Okin, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor). In addition, the article does not identify an author. The inclusion of the title, date, and author of the material is not optional but a regulatory requirement. See 8 C.F.R. § 204.5(h)(3)(iii). Further, the record contains a screenshot from www.eurotopics.net regarding 2017 circulation statistics for the print and digital versions of Times of Malta overall, rather than for the print version of the publication.

Similarly, although the article in Beijing Youth Weekly contains a brief synopsis of the Petitioner's book regarding early modern American art, [redacted], the article is not about him. In fact, the Petitioner is never mentioned in the article. The regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires the published material to be about the alien relating to his work rather than articles about his work. Again, articles that are not about an alien do not fulfill this regulatory criterion. Here, the Petitioner provided an article only about his work instead of an article about him relating to his work. In addition, the article from Beijing Youth Weekly does not identify an author. Further, the Petitioner submitted a screenshot from www.baike.baidu.com which states that Beijing Youth Weekly has a circulation rate of "8 people/copy," but did not provide evidence showing how this circulation compares to other Chinese publications.

Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 7 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

[2] Id. at 7 (noting that evidence of published material in professional or major trade publications or in other major media publications about the alien should establish that the circulation (on-line or in print) is high compared to other circulation statistics and show who the intended audience of the publication is.)

For the reasons discussed above, the Petitioner did not establish that he meets the regulatory requirements of this criterion. Accordingly, we withdraw the decision of the Director for this criterion.

> Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

As evidence under this criterion, the Petitioner submitted several letters of support discussing his work as an art critic and scholar. The Director considered this documentation but found that it was not sufficient to demonstrate that the Petitioner's work constituted original contributions of major significance in the field. In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made contributions that were original but that they have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted the field, or have otherwise risen to a level of major significance in the field.

On appeal, the Petitioner asserts that the Director erred in determining that the letters of support from colleagues in the field were insufficient to meet this criterion.[3] However, as discussed below, the letters do not offer sufficiently detailed information, nor does the record include adequate corroborating documentation, to demonstrate the nature of specific original contributions that the Petitioner has made to the field that have been considered to be of major significance.

[redacted] a professor of art history and the Petitioner's co-author and mentor, describes him as "one of the most important young art historians/critics/curators in China" who has "published widely in important academic journals in China on both modern Western art and contemporary Chinese art." Although she and [redacted] the Petitioner's doctoral advisor, claim that the Petitioner's aforementioned book presents the first discussion of early American modern art in China, they do not provide detailed information explaining the unusual influence or high impact the Petitioner's work has had on the overall field, or how it otherwise resulted in a contribution of major significance in the field. For instance, the record does not show that the Petitioner's book has widely influenced others in the field of art history or art criticism, or that his original work otherwise constitutes a contribution of major significance in the field. [redacted] further asserts that the Petitioner's book "will also substantially enrich the domestic research on Western modern art." The Petitioner did not establish, however, how his work already qualifies as a contribution of major significance in the field, rather than prospective, potential impacts.

[redacted] General Secretary of the [redacted] World Congress of Art History [redacted] 2016), confirms that the Petitioner was a [redacted] chair and participated in the overall organization of the event's academic work. Publications and presentations are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." See Kazarian v. USCIS, 580 F.3d 1030, 1036 (9th Cir. 2009), aff'd in part, 596 F.3d at 1115. Here, the Petitioner has not established that his participation at a conference by itself demonstrates a contribution of major significance in the field.

[3] While we discuss a sampling of these letters, we have reviewed and considered each one.

The Petitioner also provided two letters from [redacted] of Ran Dian magazine, who confirms that the Petitioner has been a member of the publication's senior editorial team since 2012 and calls him "an exceptionally accomplished art critic/scholar." In addition, [redacted] an art curator who worked with the Petitioner at Ran Dian magazine, provides that as a Chinese scholar of Western Modernism the Petitioner has an "unconventional viewpoint" that has enabled him to produce "some important scholarship" relating to the "government-sponsored official art system in China." While the evidence shows that the Petitioner contributed to Ran Dian's activities, it does not show the unusual influence or great impact of his work in the overall field beyond that publication. [4]

Here, the letters do not contain specific, detailed information explaining the unusual influence or high impact the Petitioner's work has had on the overall field. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.[5] On the other hand, letters that lack specifics and use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.[6] Moreover, USCIS need not accept primarily conclusory statements. 1756, Inc. v. The U.S. Att'y Gen., 745 F. Supp. 9, 15 (D.C. Dist. 1990).

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that he has made original contributions of major significance in the field.

III. CONCLUSION

We find that although the Petitioner satisfies the scholarly articles criterion, he does not meet the criteria regarding published material and original contributions of major significance. While he argues and submits evidence for one additional criterion on appeal, relating to judging at C.F.R. § 204.5(h)(3)(iv), we need not reach this additional ground. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve this issue.[7] Accordingly, we need not provide the type of final merits determination referenced in Kazarian, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. Matter of Price, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or

[4] See USCIS Policy Memorandum PM 602-0005.1, supra, at 8-9; see also Visinscaia, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

[5] See USCIS Policy Memorandum PM 602-0005.1, supra, at 8-9.

[6] Id. at 9. See also Kazarian, 580 F.3d at 1036, aff'd in part 596 F.3d at 1115 (holding that letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field).

[7] See INS v. Bagamasbad, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); see also section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. See section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). Although the Petitioner has authored scholarly articles, the record does not contain sufficient evidence establishing that he is among the upper echelon in his field.

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.